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Brooklyn, NY 11204

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OCT 25 2005

In re Application of
Heidi Kay and Russell Fradin
Application No. 09/216,206
Filed: December 18, 1998
Attorney Docket No. B2745.0025

OFFICE OF PETITIONS

ON PETITION

This is a decision in response to the papers filed August 1, 2005, which are being treated as:

- (1) a petition under 37 CFR 1.48(c) to correct inventorship,
- (2) a petition under 37 CFR 1.183 requesting waiver of 37 CFR 1.48(c) for inventor Roth, and
- (3) a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.63 where they require that a supplemental declaration be executed by all the named inventors.

The petition under 37 CFR 1.48(c) is **dismissed**.

The petition under 37 CFR 1.183 requesting waiver of 37 CFR 1.48(c) is **dismissed**.

The petition under 37 CFR 1.183 requesting waiver of 37 CFR §§ 1.67 and 1.63 is **dismissed**.

Requirements for a petition under 37 CFR 1.48(c) include:

- (1) a statement by each person being added as an inventor that the addition is necessitated by amendment of the claims and that the inventorship error occurred without deceptive intention on his or her part, and
- (2) an oath or declaration by the actual inventors as required by Rule 63 or as permitted by Rules 42, 43, and 47.

Petitioner seeks to add two inventors. The inventors are Dylan Salisbury and David William Roth.

The prior set of petitions stated that Salisbury had been reached and that the petitions were accompanied by a copy of the required statement and declaration by Salisbury.

A copy of the declaration could not be located and the Office asked for an additional copy. Unfortunately, the Office failed to note the statement was missing as well as the declaration. The Office requests petitioner submit another copy of the statement of lack of deceptive intent signed by Salisbury.

The declaration submitted has been reviewed by cannot be accepted. The declaration fails to state a mailing or residential address for inventor Roth. Unless the information has been supplied on an application data sheet filed in compliance with Rule 76, the declaration must list the mailing address for each inventor and the residential address if it differs from the mailing address. An application data sheet has not been filed. The declaration fails to list an address for Roth. Therefore, the Office cannot accept the declaration as filed.

In order for the petitions to be granted the Office needs a copy of the statement regarding lack of deceptive intent signed by Salisbury and either,

- (1) a new declaration signed by Salisbury which includes the last known mailing address for Roth and the last known residential address for Roth if it differs from the mailing address, or
- (2) an application data sheet in compliance with Rule 76.

Petitioner expresses concern that additional petition fees may be due. All of the petition fees at issue are set by rule and not by statute. The Office has the power to waive rules. To the extent additional petition fees are owed, the Office sua sponte waives the fees.

The request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petitions Under 37 CFR 1.183 and 37 CFR 1.48(c)."

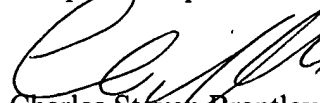
After filing a request for reconsideration, petitioner should feel free to call the undersigned in order to allow the undersigned to promptly consider the merits of the renewed petition.

Future correspondence may be directed to:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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Office of Petitions